

OLL 84-2059/6
5 July 1984

MEMORANDUM FOR: See Distribution

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FROM:

Deputy Chief, Legislation Division
Office of Legislative Liaison

SUBJECT: Status of CIA Freedom of Information Act
Legislation, H.R. 5164

1. As you all know, the mark-up of H.R. 5164 that had been scheduled for 6 June was indefinitely postponed by the House Government Operations Subcommittee on Government Information, Justice and Agriculture (the Subcommittee). Since that time, we have continued to press for consideration of the bill by the Subcommittee within a timeframe which will allow for enactment of the legislation yet this session.

2. Recently representatives from the Office of Legislative Liaison (OLL) met with the majority counsel, Robert Gellman, and the minority counsel, Tom Parisi, of the Subcommittee and Mike O'Neill, Bernie Raimo, Steve Berry and David Addington of the House Permanent Select Committee on Intelligence (HPSCI) to discuss the future of H.R. 5164. Mr. Gellman reported that Subcommittee Chairman English still has concerns in the area of oversight of CIA filing practices. In order to alleviate these concerns, Mr. Gellman made three proposals:

(1) Amend the bill to require for two years a semi-annual public report (a total of four such reports) giving various statistics on the status of our processing of FOIA requests;

(2) Allow Representative English to conduct a personal on-site investigation of CIA processing and compliance post-enactment; and

(3) Provide for an exchange of letters to take place between Subcommittee Chairman English and HPSCI Chairman Boland concerning HPSCI oversight of CIA filing practices and implementation of this legislation.

3. As a result of this meeting, the HPSCI staff and the Subcommittee staff have agreed upon the exchange of the attached draft letters. Furthermore, the language underscored in the attached draft bill constitutes the proposed Subcommittee amendments to H.R. 5164.

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4. At this point, we anticipate the Subcommittee will hold a mark-up of the bill the week of 23 July, with consideration and reporting out by the full Government Operations Committee the following week. The bill is expected to be placed on the suspension calendar, a procedure which allows for expedited passage of legislation that has support from both sides of the aisle. We are cautiously optimistic that the bill could be passed by the full House prior to their adjournment on 10 August.

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5. Other encouraging news came to the Deputy Director, OLL, [] last week. During a telephone conversation with Representative Mazzoli (congratulating him on House passage of the immigration legislation), Representative Mazzoli queried [] concerning the status of the FOIA legislation. After [] briefed him as to where it stood, Representative Mazzoli stated his commitment to give the bill his full and active support and expressed his intention to place a call to both Chairman Boland and Subcommittee Chairman English. We do not know whether these calls have actually yet taken place.

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6. Congress is now in recess until 23 July. We will let you know as soon as a date has been announced by the Subcommittee.

7. Also attached for your information is a copy of the hearing transcript from the 8 February HPSCI hearing. We also have a limited number of HPSCI reports on the bill. Let us know if you would like a copy.

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Attachments

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Congress of the United States
House of Representatives
 Washington, D.C. 20515

September 12, 1984

Dear Colleague:

The House will shortly be considering H.R. 5164, the "Central Intelligence Agency Information Act," to improve CIA responsiveness to public requests for information under the Freedom of Information Act and to provide additional protection for certain sensitive CIA operational files. The legislation has been crafted with great care to ensure that modifying the application of the Freedom of Information Act to these files will neither diminish the amount of meaningful information currently available to the public under the FOIA nor diminish the important role of the courts in reviewing CIA compliance with the FOIA.

H.R. 5164 removes certain specifically defined sensitive CIA operational files from FOIA search, review and disclosure requirements. The contents of these files, which concern the sources and methods employed in the conduct of intelligence activities, are exempt from disclosure under existing FOIA exemptions for classified information and information relating to intelligence sources and methods, and have never been released under the FOIA.

Unproductive FOIA processing of CIA operational records which contain no meaningful information releasable under the FOIA absorbs a substantial amount of the time of experienced CIA operational personnel and of scarce tax dollars. This expenditure of time and money contributes nothing to the FOIA goal of an informed citizenry. In fact, it actively hinders achievement of that goal, because the time-consuming process of reviewing sensitive CIA operational records which prove unreleasable creates a bottleneck in the Agency's FOIA review process, causing a two-to-three year delay in CIA responses to many FOIA requests.


H.R. 5164 will eliminate the waste of resources on processing of unreleasable CIA operational records and will enable the CIA to respond more quickly and more efficiently to FOIA requests in the future than it has in the past. The legislation will also provide important additional assurances of security in the conduct of intelligence activities.

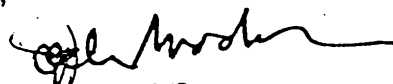
The bill specifically provides that CIA operational files will continue to be fully subject to FOIA search and review requirements for three important categories of FOIA requests: (1) requests by individuals for information on themselves, (2) requests concerning CIA covert actions, and (3) requests concerning the subject matter of investigations of intelligence activities for illegality or impropriety. The legislation also preserves the existing FOIA substantive standard of judicial review, which requires the courts to conduct de novo review of CIA action to implement the bill.


Finally, the legislation makes clear that the Privacy Act is not a nondisclosure statute displacing the disclosure provisions of the FOIA. This provision restores the proper relationship between the FOIA and the Privacy Act intended by Congress when it considered both statutes in 1974, but which has become confused by subsequent misinterpretation by certain administrative agencies and a few federal courts.

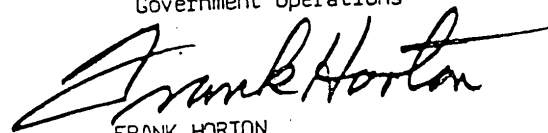
We urge you to join us in voting in favor of passage of H.R. 5164.

Sincerely,


 EDWARD P. BOLAND
 Chairman, Permanent Select
 Committee on Intelligence


 JACK BROOKS
 Chairman, Committee on
 Government Operations


 J. KENNETH ROBINSON
 Ranking Minority Member


 FRANK HORTON
 Ranking Minority Member

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